

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

OAK SYSTEMS, INC.	:	CIVIL ACTION
	:	NO. 01-2794
Plaintiff,	:	
	:	
v.	:	
	:	
FRANCOTYP-POSTALIA, INC.,	:	
et al.,	:	
	:	
Defendant.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

February 5, 2002

Plaintiff Oak Systems, Inc. asserts a civil conspiracy claim against defendants Francotyp-Postalia, Inc. ("Postalia") and TMC/Compco LLC ("TMC") alleging that in 1994, plaintiff entered into a non-exclusive agency/dealer contract with defendant Postalia whereby plaintiff would sell mail metering equipment manufactured by defendant. Plaintiff was also a dealer for Pitney-Bowes, whose share of the U.S. market for such equipment is 84 percent. In 1998, defendant Postalia offered James Pucci, then plaintiff's sales manager, a substantially similar agency/dealer agreement as an officer of TMC, a competitor of plaintiff, and authorized Pucci to acquire a controlling interest in TMC.<sup>1</sup> Plaintiff alleges that through Pucci defendants were able to gain confidential Pitney-Bowes customer data, proprietary information concerning plaintiff's

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<sup>1</sup> TMC was added as a defendant in plaintiff's amended complaint filed August 17, 2001 (doc. no. 10).

customers and prospective customers, and otherwise unavailable information Pucci had obtained as a former Pitney-Bowes executive. Plaintiff alleges that defendants' concerted conduct maliciously interfered with plaintiff's business relationships with its customers and prospective customers, and that as a direct and proximate result plaintiff has suffered losses of income and business opportunities.

The case was originally filed in the Court of Common Pleas in Philadelphia, Pennsylvania. Thereafter, defendants timely removed the case to this court based on diversity of citizenship. Defendants then moved to dismiss the claim asserting: 1) improper venue based on the forum selection clause included in the contract, 2) the request for punitive damages is barred by the contract, and 3) the claim against Francotyp-Postalia AG should be dismissed for failure to serve process as required under the Hague Convention.<sup>2</sup> The court denied defendants' motion as to the first two arguments and granted the motion as to the third argument.

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Defendant Postalia has moved for reconsideration of the court's order declining to enforce the forum selection clause. The court denied this portion of the defendant's motion

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<sup>2</sup> Francotyp Postalia AG is the German parent company of Postalia.

on the ground that the contract, specifically, the forum selection clause, is ambiguous, and the court could not conclude as a matter of law that the parties had intended for the clause to cover a claim for civil conspiracy. In the motion for reconsideration, defendant Postalia asserts that the issue of the applicability of the forum selection clause to tort claims was raised for the first time at oral argument and, therefore, the argument had not been briefed by the parties. Postalia now contends that the court's interpretation of the forum selection clause is contrary to established case law.<sup>3</sup>

The forum selection clause at issue in this case states:

#### 15. LEGAL ACTIONS

Any claims or legal actions shall be taken only before the proper court or panel in DuPage County, Illinois. This Agreement shall be interpreted and enforced in accordance with the internal laws (except for conflict of law provisions) of Illinois.

Dealer Agreement, Pl's Compl., Ex. A. Defendant makes two arguments in support of the applicability of the forum selection

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<sup>3</sup> A district court will grant a party's motion for reconsideration in any of three situations: (1) the availability of new evidence not previously available, (2) an intervening change in controlling law, or (3) the need to correct a clear error of law or to prevent manifest injustice. See Federico v. Charterers Mut. Assur. Ass'n Ltd., 158 F. Supp. 2d 565, 577 (E.D. Pa. 2001) (citing NL Indus., Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n.8 (3d Cir. 1995)). The court finds that the third situation concerning a clear error of law applies here.

clause to plaintiff's civil conspiracy claim.

One, because the forum selection clause was not limited or conditioned in any way, the parties intended to include within the scope of the forum selection clause all disputes that might arise between the parties, including tort claims.

In Ronar, Inc. v. Wallace, 649 F. Supp. 310 (S.D.N.Y. 1986), plaintiff (distributor) alleged wrongdoing by defendants (manufacturer and former employee) similar to the allegations here, i.e. that defendants schemed behind plaintiff's back to cut off their dealings with plaintiff, that defendants improperly hired a key employee of plaintiff and set him up in a new business that would compete with plaintiff, taking advantage of this employee's inside information about plaintiff's business. Id. at 312. Plaintiff asserted several tort claims against defendants, including breach of fiduciary duties and interference with contractual relations. Id. The agreement between plaintiff and defendant contained the following clause: "The courts at Tirschenreuth, [Germany], shall have jurisdiction and venue." Id. The court rejected plaintiff's argument that the forum selection clause does not apply to tort claims. "[T]he terms the parties chose are very simply and very broad. Thus, nuance provides no additional illumination. That a West German court 'shall have jurisdiction and venue' raises no distinction between contract and tort. It confers jurisdiction and venue over all litigation arising between the parties in the court of their

dealing." Id. at 314.

Similarly, in Brock v. Entre Computer Centers, Inc., 740 F. Supp. 428 (E.D. Tex 1990) and Stephens v. Entre Computer Centers, Inc., 696 F. Supp. 636 (N.D. Ga. 1988), both courts refused to limit the applicability of a forum selection clause solely to actions arising under the contract, where the clauses contained no such limitation. Both cases interpreted the identical forum selection clause in a franchise agreement: "The parties agree that any action brought by either party in any court, whether federal or state, shall be brought within the Commonwealth of Virginia . . . ." Brock, 740 F. Supp. at 430; Stephens, 696 F. Supp. at 638. Although, plaintiffs in both cases argued that the clause did not apply to tort claims such as fraud and breach of fiduciary duties, both courts enforced the forum selection clause as to the tort claims. See Brock, 740 F. Supp. at 430; Stephens, 696 F. Supp. at 638 (forum selection clause "refers to 'any action' and does not explicitly limit the actions to ones arising 'under or in connection with' the contract"). See also Hoes of America, Inc. v. Hoes, 493 F. Supp. 1205, 1207 (C.D. Ill. 1979) (forum selection clause in distributorship agreement providing that "Any court procedures shall be held in Bremen [Germany]," not ambiguous and gave German courts "exclusive jurisdiction over plaintiff's claims of unfair competition and related torts").

Based on these authorities, the court now concludes

that broad, unconditional forum selection clauses which mandate jurisdiction in a specific forum, like the one at bar, apply to all claims, whether they be based in tort or contract, and shall be enforced.

Two, even if the forum selection clause at issue is limited to claims "arising under or relating to" the contract, it would still apply to the tort claim asserted by plaintiff. At oral argument on defendant's motion to dismiss, the court suggested that if the first sentence of § 15 of the contract is read in conjunction with the second sentence, the second sentence limits the first because it refers to only the agreement. If the court's view is correct, the court concludes that the forum selection clause still applies to plaintiff's tort claim.

In Crescent International, Inc. v. Avatar Communities, Inc., 857 F.2d 943 (3d Cir. 1988), the forum selection clause stated that "any litigation upon any of [the contract's] terms . . . shall be maintained" in state or federal court in Miami Florida. Id. at 943. The Third Circuit held that "pleading alternate non-contractual theories is not alone enough to avoid a forum selection clause if the claims asserted arise out of the contractual relation and implicate the contract's terms." Id. at 944. Similarly, in Stewart Organization, Inc. v. Ricoh Corp., 810 F.2d 1066 (11<sup>th</sup> Cir. 1987) (en banc), aff'd and remanded on other grounds, 487 U.S. 22 (1988), the Eleventh Circuit held that a clause stating that courts in New York City, would have

"exclusive jurisdiction over any cause or controversy arising under or in connection with this agreement" (id. at 1067) covers "all causes of actions arising directly or indirectly from the business relationship evidenced by the contract." Id. at 1070.

In the present case, plaintiff's tort claim for civil conspiracy has its factual basis in the contractual business relationship between plaintiff and defendant Postalia. Plaintiff alleges that Postalia colluded with plaintiff's former employee to obtain plaintiff's confidential proprietary information and set up a dealer competitive with plaintiff. Postalia's ability to do business with other dealers in the territory serviced by plaintiff is governed by the terms of the non-exclusive distribution rights given to plaintiff in the written dealer agreement. Thus, plaintiff's dispute with Postalia clearly arises out of, at least indirectly, if not directly, the business relationship created by the agreement. Under the agreement, defendant Postalia is entitled to enforce the forum selection clause.

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Plaintiff makes three arguments as to why enforcement of the forum selection clause is inappropriate in this case. The court concludes that the arguments lack merit.

One, plaintiff claims that the forum selection clause is unreasonable. A forum selection clause is unreasonable, and

enforcement of such a clause should be denied, only if the party resisting enforcement can demonstrate that the selected forum is "so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court." The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 18 (1972). Plaintiff has not met this burden.

Two, plaintiff claims that the forum selection clause should not apply to plaintiff's claim because it does not reflect the "legitimate expectation of the parties." Plaintiff asserts that the agreement between the parties was not freely reached because Postalia presented an all or nothing situation and that if the parties intended for the forum selection clause to be all encompassing, they would have said so. This argument is rejected because the agreement was reached between two sophisticated business entities at arms-length and plaintiff was free to decline to enter the contract at any time.

Three, plaintiff claims that the contract is ambiguous, as the court had found, and a reasonable interpretation is that the forum clause is limited by the choice of law provision and that the forum clause applies to disputes arising out of the terms of the contract, which is not the situation in this case. Plaintiff relies on a Pennsylvania state case which looks to federal law after finding an absence of state law on the issue. In Morgan Trailer Manufacturing Co. v. Hydraroll, Ltd., 759 A.2d 926 (Pa. Super. 2000), the court held that the forum selection



clause did not cover non-contract claims. However, the language of the clause in Morgan distinguishes it from the present case. The clause in Morgan stated: "This Agreement and each contract made between the parties hereunder for the sale of Products will in all respects be interpreted in accordance with the laws of England and the parties hereby submit themselves to the exclusive jurisdiction of the English Courts." Id. at 931. The court held that the choice of law provision limitation applied to the forum selection clause and, thus, the forum selection clause did not apply to the tort claims asserted by plaintiff because they did not involve the contracts for the sale of products. Id. at 931-32. Here, the forum selection clause is much broader and applies to "any claims or legal actions" between the parties.

An appropriate order follows.